88-2065

No. _____

Supreme Court, U.S.
FILED
JUN 19 1989
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT
OF THE UNITED STATES

October Term, 1988

EDWARD E. ROMP,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

TO THE HONORABLE ANTONIN SCALIA
ASSOCIATE JUSTICE OF THE SUPREME COURT
OF THE UNITED STATES
AND CIRCUIT JUSTICE FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

EDWARD E ROMP
In Propria Persona
3220 Colleen Court
Toledo, Ohio 43614
(Mail Address)
(419) 385-2734

QUESTIONS PRESENTED

1. Is the (1)US Attorney and Assistant US Attorney, (2)the Clerk of Court and Deputy Clerk of Court, (3)the United States Magistrate, (4)the United States District Court Judge and his Law Clerks, (5)the United States Marshal and Deputy U.S. Marshal bound to obey,

   (a) the Constitution of the United States?

   (b) Positive law of the United States Code?

   (c) the Federal Rules of Criminal Procedure and Federal Rules of Civil Procedure?

   (d) the Constitution and laws of the State of Ohio?

2. Is an inhabitant of the State of Ohio bound to voluntarily appear to answer

a defective summons when,

(a) the summons is NOT served upon the person named in the summons, by a United States Marshall or any other person authorized to serve a summons in a civil action, or left at his dwelling place BUT is simply sent by regular U.S.Mail?

(b) the defective summons does not have a written sworn complaint attached?

(c) when the voluntary appearance to answer the defective summons will give jurisdiction to the court?

3. May an arrest warrant be issued for failure to answer a summons when

(a) the summons is NOT served upon the person named in the summons, by a United States Marshall or any other person authorized to

serve a summons in a civil action, or left at his dwelling place BUT is simply sent by regular U.S.Mail?

(b) the summons does not have a sworn complaint attached to the summons?

(c) there has not been a showing of probable cause, supported by a sworn written statement?

4. Does "due process of law" require a written statement made upon oath before an arrest warrant is issued?

5. Is the US Magistrate bound to inform the accused that he may demand a grand jury indictment?

6. May an inhabitant of Ohio be prosecuted in a United States District Court for an alleged crime when,

(1) the alleged crime is not listed

in Title 18 United States Code Crimes and Criminal Procedure,

(2) there is NOT a sworn written statement naming

(a) the crime,

(b) the court having jurisdiction,

(c) the location where the alleged crime was committed, and

(d) the person who committed the alleged crime?

(3) There has not been a presentment or indictment by a grand jury?

(4) indictment has not been waived

(5) the accused has not consented to be prosecuted by a Magistrate on an information?

7. Does the US District Court have constitutional authority to impanel a petit (trial) jury before a Grand Jury

has made a presentment or indictment?

8. Does the US Marshal have authority to request the assistance and have Armed Special Agents of the Internal Revenue Service present when making a seizure of a person who at the time of the seizure is not violating Subtitle E?

9. Does (1)the US Magistrate, (2)a United States District Court Judge have constitutional authority,
   (a) to deny an inhabitant of the State of Ohio, the right to have the assistance of counsel (who is not a member of any bar association) in a criminal prosecution?
   (b) deny the assistance of counsel to be seated at the inhabitant's defense table?

10. Can a United States Attorney on the

"Designation form to be used by the United States Attorney to indicate the category of the criminal cause for purpose of assignment" select and mark TAX FELONY and on this form list a CHARGE: "Evasion of Federal Income Tax Returns" and then in an accompanying document filed with his (unverified) INFORMATION change the type of prosecution to a "MISDEMEANOR" and change the CHARGE to a description "Failure to file return"?

11. Does a United States Magistrate have authority under the Constitution to "strike" an AMICUS BRIEF filed by a person who is not a member of the bar association for the "reason" that such person is not a member of the bar association?

TABLE OF CONTENTS

	Page
Questions Presented	passim
Table of Authorities	xii
Reports of Orders and Opinions in Court Below	xvii
PETITION FOR WRIT OF CERTIORARI	1
OPINION BELOW	2
JURISDICTION	4
STATEMENT OF GROUNDS FOR JURISDICTION	4
CONSTITUTIONAL PROVISIONS, STATUTES, RULES AND REGULATION INVOLVED	7
STATEMENT OF FACTS	11
LACK OF FEDERAL JURISDICTION IN THE COURT OF FIRST INSTANCE	18
REASONS FOR GRANTING THE WRIT	22

I THE (1)US ATTORNEY AND ASSISTANT US ATTORNEY, (2)THE CLERK OF COURT AND DEPUTY CLERK OF COURT, (3)THE UNITED STATES MAGISTRATE, (4)THE UNITED STATES DISTRICT COURT JUDGE AND HIS LAW CLERKS, (5)THE UNITED STATES MARSHAL AND DEPUTY U.S. MARSHAL HAVE REFUSED TO OBEY (A) THE CONSTITUTION OF THE UNITED STATES, (B) POSITIVE LAW OF THE UNITED STATES CODE,

(C) THE FEDERAL RULES OF CRIMINAL PROCEDURE AND FEDERAL RULES OF CIVIL PROCEDURE AND (D) THE CONSTITUTION AND LAWS OF THE STATE OF OHIO?

page 25

II EDWARD E. ROMP AN INHABITANT OF THE STATE OF OHIO DID NOT VOLUNTARILY APPEAR TO ANSWER SUMMONS THAT WAS NOT SERVED UPON HIM BY A UNITED STATES MARSHALL OR ANY OTHER PERSON AUTHORIZED TO SERVE A SUMMONS IN A CIVIL ACTION, OR LEFT AT HIS DWELLING PLACE BUT WAS SIMPLY SENT BY REGULAR U.S.MAIL. THE DEFECTIVE SUMMONS DID NOT HAVE A WRITTEN SWORN COMPLAINT ATTACHED. ROMP KNEW THAT THAT TO VOLUNTARY APPEAR TO ANSWER THE DEFECTIVE SUMMONS WOULD GIVE JURISDICTION TO THE COURT AND WOULD WAIVE THE DEFECTS IN THE SUMMONS.

page 26

III ROMP WAS ARRESTED ON A WARRANT ISSUED FOR FAILURE TO ANSWER A SUMMONS WHICH WAS NOT SERVED UPON HIM BY A UNITED STATES MARSHALL OR ANY OTHER PERSON AUTHORIZED TO SERVE A SUMMONS IN A CIVIL ACTION, NOR LEFT AT HIS DWELLING PLACE BUT WAS SIMPLY SENT BY REGULAR U.S.MAIL. THE SUMMONS DID NOT HAVE A SWORN COMPLAINT ATTACHED TO THE SUMMONS. THE COURT DID NOT HAVE A SHOWING OF PROBABLE CAUSE, SUPPORTED BY A SWORN

WRITTEN STATEMENT.

page 27

IV THE FIFTH AMENDMENT STATES THAT NO PERSON MAY BE DENIED , THE FOURTH AMENDMENT STATES THAT "NO WARRANT SHALL ISSUE, BUT UPON PROBABLE CAUSE SUPPORTED BY OATH OR AFFIRMATION" AND FED. CRIM. R. 3 STATES THAT A "COMPLAINT IS A WRITTEN STATEMENT OF THE ESSENTIAL FACTS CONSTITUTING THE OFFENSE CHARGED. IT SHALL BE MADE UPON OATH BEFORE A MAGISTRATE.

page 29

V FED. CRIM. R. 4 (B) STATES ". . .MAY BE PROSECUTED BY INFORMATION IF THE DEFENDANT, AFTER HE HAS BEEN ADVISED OF THE NATURE OF THE CHARGE AND OF HIS RIGHTS, WAIVES IN OPEN COURT PROSECUTION BY INDICTMENT.

page 30

VI ROMP AN INHABITANT OF OHIO WAS PROSECUTED IN A UNITED STATES DISTRICT COURT FOR AN ALLEGED CRIME THAT IS NOT LISTED IN TITLE 18 UNITED STATES CODE CRIMES AND CRIMINAL PROCEDURE. THE COURT DID NOT HAVEA SWORN WRITTEN STATEMENT NAMING THE CRIME, THE COURT HAVING JURISDICTION, THE LOCATION WHERE THE ALLEGED CRIME WAS COMMITTED, OR THE PERSON WHO COMMITTED THE ALLEGED CRIME. THERE HAS NOT BEEN A PRESENTMENT OR INDICTMENT BY A

GRAND JURY NOR WAS AN INDICTMENT WAIVED, NOR WAS CONSENT GIVEN TO BE PROSECUTED BY A MAGISTRATE ON AN INFORMATION.

page 31

VII THE FIFTH AMENDMENT STATES THAT "NO PERSON SHALL BE HELD TO ANSWER FOR A CAPITAL OR OTHERWISE INFAMOUS CRIME, UNLESS ON A PRESENTMENT OR INDICTMENT OF A GRAND JURY.

page 32

VIII THE US MARSHAL AND ARMED SPECIAL AGENTS OF THE INTERNAL REVENUE SERVICE SEIZED ROMP AT HIS LAWFUL PLACE OF WORK AND AT THE TIME OF THE SEIZURE WAS NOT VIOLATING SUBTITLE E, AND HAS NOT IN THE PAST VIOLATED SUBTITLE E.

page 33

IX THE US MAGISTRATE, AND A UNITED STATES DISTRICT COURT JUDGE DENIED ROMP, AN INHABITANT OF THE STATE OF OHIO, THE RIGHT TO HAVE THE ASSISTANCE OF COUNSEL (WHO IS NOT A MEMBER OF ANY BAR ASSOCIATION) IN A CRIMINAL PROSECUTION AND ALSO PREVENTED ROMP'S "ASSISTANCE OF COUNSEL FROM BEING SEATED AT ROMP'S DEFENSE TABLE?

page 35

X THE UNITED STATES ATTORNEY ON THE "DESIGNATION FORM TO BE USED BY THE UNITED STATES ATTORNEY TO INDICATE THE

CATEGORY OF THE CRIMINAL CAUSE FOR PURPOSE OF ASSIGNMENT." SELECTED AND MARKED TAX FELONY AND ON THIS FORM LISTED THE CHARGE AS: "EVASION OF FEDERAL INCOME TAX RETURNS" AND THEN IN AN ACCOMPANYING DOCUMENT FILED WITH HIS (UNVERIFIED) INFORMATION WHICH LISTED THE TYPE OF PROSECUTION AS "MS" WHICH ON THE BOTTOM OF THE FORM INDICATES (MISDEMEANOR) AND THE DESCRIPTION AS "FAILURE TO FILE RETURN".

page 36

XI THE UNITED STATES MAGISTRATE "STRUCK" AN AMICUS CURIAE BRIEF FILED BY A PERSON WHO IS NOT A MEMBER OF THE BAR ASSOCIATION FOR THE "REASON" THAT SUCH PERSON IS NOT A MEMBER OF THE BAR ASSOCIATION.

page 37

CONCLUSION 38

RELIEF REQUESTED 40

DECLARATION 42

PROOF OF SERVICE 44

SIGNATURE 43

TABLE OF AUTHORITIES

Cases	Page
Boyd v United States 116 U. S. 616, 635 (1885)	22
Brown v. Mississippi, 297 U.S. 278 (1936)	-D-12
Jackson v. Denno, 378 U.S. 368, 376-377 (1964)	-D-11
Kirby v. Illinois, 406 U.S. 682, 689 (1972)	-D-12
Malloy v. Hogan 378 U. S. 1 (1964)	-D-10
Mincey v. Arizona 437 U.S. 389, 398, (1978)	-D-10
Miranda v. Arizona 384 U. S. 436, 491 (1966)	39
Opper v. U.S., 384 U. S. 84,93 (1954)	-D-11
Smith v. U.S., 348 U.S. 147, 156 (1954)	-D-12
Thomas v. U.S., 15 F.2d 958 (8th Cir 1926)	-D-11
United States v 1960 Bags of Coffee, 8 Cranch 398, 415 (1814)	21, 27
United States v. Claflin, 97 U.S. 546 (1878)	20

U.S. v.Dohm,
597 F.2d 535 (5th Cir 1979) -D-12

U.S. v. Evans,
572 F.2d 455 (5th Cir) *cert denied* 439 U. S. 870 (1978)
-D-11

United States v Flores,
289 U.S. 137, 151 (1933) 19, 28

U.S. v. Hernandez,
574 F.2d 1362 (5th Cir 1978) -D-13

United States v Hudson,
7 Cranch 32, 34 (1812) 18, 32

U. S. v. Jordan,
570 F.2d 635, 643 (6th Cir 1978)
-D-13

U.S. v. Micieli,
594 F.2d 102 (5th Cir 1979) -D-11

United States v Millican
600 F.2d 273 (5th Cir. 1979) 26, 29

U.S. v. Powe,
591 F.2d 833, 839-840 (D.C. Cir 1978)
-D-13

U.S. v Shoemaker,
542 F.2d 561 (10th Cir) *cert denied* 429 U.S. 1004 (1976)
-D -11

Rules and Statutes

Federal Rules of Criminal Procedure

Rule 1	8
Rule 2	8
Rule 3	8, 21
Rule 4	8, 21, 30, 33
Rule 5	8, 21
Rule 6	8
Rule 7	8
Rule 9	8, 15

Federal Rules of Civil Procedure

Rule 4(c)(2)(C)(ii)	8
Rule 4(d)	8
Rule 4(g)	8
Rule 4(j)	8

Rules of Procedure for the Trial of Misdemeanors before United States Magistrates

Rule 1(b)	8
Rule 2(c)	8

Rule 4(c) 9

Rules Governing Proceedings in the United States District Courts Under Section 2255 of Title 28, United States Code

Rule 1(1) 9

Rule 3(b) 9

RULES OF THE SUPREME COURT OF THE UNITED STATES

Rule 17. Considerations governing review on certiorari 7

Rule 28.5.(c) Filing and serv. 9, 44

TITLE 18 UNITED STATES CODE,

Section 3041 9

Section 3045 9, 20

TITLE 21 UNITED STATES CODE,

Section 7203 (sic) 3

TITLE 26 UNITED STATES CODE,

Sec. 6001 -D-7

Sec. 6011 -D-7

Sec. 7203 -D-8

Sec. 7608 34

TITLE 28 UNITED STATES CODE,

Section 1340 10

Section 1652 10, 31

Section 2106 7

Section 2255 4, 10, 26

UNITED STATES ATTORNEY'S MANUAL -D-9

Handbook for Special Agents -D-5

Sec 721 (of Handbook quotes the following

U.S. v. Langsdale;

(no cite given) -D-4

Dordenello v. U. S.

(no cite given) -D-4

Constitution

Constitution of the State of Ohio

Article I Section 10 7, 15, 31, 32

Constitution of the United States

Article III Section 1 7

Article III Section 1 23

Article VI Paragraph 2 7

Amendment IV 7

Amendment V 7, 32

Amendment VI 7, 23

Amendment VIII 7

MAGNA CARTA

Article number 40 24

Article number 45 24

REPORTS OF ORDERS AND OPINIONS IN THE COURT BELOW

UNITED STATES DISTRICT COURT

ORDER by United States Magistrate filed September 21, 1987 "striking the Amicus Curiae Brief". (Document #7 on the docket sheet)

ORDER by United States Magistrate filed OCT 28, 1987 granting the government's motion for competency examination. (Document #21 on the docket sheet)

MEMO AND ORDER by United States Magistrate filed NOV 5, 1987 granting the government's motion for competency examination. (Document #28 on the docket sheet)

ORDER by United States Magistrate filed DEC 4, 1987 Defendant found competent

to stand trial. (Document #38 on the docket sheet)

MEMO AND ORDER by United States Magistrate filed JAN 5, 1988 refering defendants motion to the District Judge for determination (Document #45 on the docket sheet)

MEMO AND ORDER by Judge Potter filed JAN 15, 1988 "that defendants motion to have a nonlawyer counsel present at counsel table be, and hereby is DENIED.(Document #48-2 on the docket sheet)

JUDGMENT in a Criminal Case filed APR 18, 1988. (Document #74 on the docket sheet)

MEMO AND ORDER by Judge Potter filed MAY 24, 1988 "defendants motion under 28 U.S.C Section 2255 is DENIED.(Document #87 on the docket sheet)

MEMO AND ORDER by Judge Potter filed JUL 5, 1988 "defendants motion under 28 U.S.C Section 2255 is DENIED.(Document #108 on the docket sheet)

SURRENDER ORDER by Judge Potter filed JUL 11, 1988 Defendant to surrender to United States Marshal on August 1, 1988. (Document #126 on the docket sheet)

JUDGMENT in a Criminal Case filed JUL 12, 1988. (Document #127 on the docket sheet)

JUDGMENT ORDER returned executed 8/8/88 at FPC 2, 1988. Terre Haute.(Document #146 on the docket sheet)

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT Case No. 88-3354

ORDER that defendant's Motion to Eliminate the Probation and Conditions of Probation and the Special Conditions of

Probation Set By The Trial Court be and hereby is DENIED. Filed May 24, 1988 John P. Hehman, Clerk.

ORDER that defendant's Motion to Reconsider Motion to Eliminate the Probation and Conditions of Probation and the Special Conditions of Probation Set By The Trial Court be and hereby is DENIED. Filed JUL 25, 1988 Leonard Green, Clerk.

ORDER that motion for a stay of execution of the sentence is DENIED. Filed JUL 29, 1988 Leonard Green, Clerk.

ORDER that motion to suspend the requirement of the Federal Rules of Appellate Proedure is DENIED. Filed NOV 4 1988 Leonard Green, Clerk.

ORDER that defendant's "third motion for bail pending appeal" is DENIED. Filed FEB 21, 1988 Leonard Green, Clerk.

(see Defendant's "EMERGENCY MOTION FOR RELEASE FROM IMPRISONMENT PENDING APPEAL BASED ON THE VIOLATION OF FEDERAL CRIMINAL RULE 9 AND THE DENIAL OF RIGHTS UNDER THE FOURTH AMENDMENT" --recopied and printed at page 11 of APPENDIX -A-

and also see the "MOTION FOR REVIEW AND RECONSIDERATION BASED ON SIX ERRORS IN THE ORDER FILED FEBRUARY 21") --recopied and printed in Appendix -B-

ORDER defendant's motion ("EMERGENCY MOTION FOR RELEASE FROM IMPRISONMENT PENDING APPEAL BASED ON THE VIOLATION OF FEDERAL CRIMINAL RULE 9 AND THE DENIAL OF RIGHTS UNDER THE FOURTH AMENDMENT") denied --recopied and printed at page 33 of APPENDIX -A-

ORDER district court's judgment of conviction is affirmed. --recopied and printed at page 26 of APPENDIX -A-

ORDER dated APR 19 1989 correcting Title 21 to Title 26. --recopied and printed at page 31 of APPENDIX -A-

No. _____

IN THE

SUPREME COURT

OF THE UNITED STATES

October Term, 1988

EDWARD E. ROMP,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

TO THE HONORABLE ANTONIN SCALIA
ASSOCIATE JUSTICE OF THE SUPREME COURT
OF THE UNITED STATES
AND CIRCUIT JUSTICE FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT

The petitioner, Edward E. Romp, respectfully prays that a writ of certiorari issue to review the judgment rendered by the United States Court of

Appeals for the Sixth Circuit in the case United States vs Edward E. Romp, Appeals Court Case No 88-3354, District Court Case No 87-7071M.

OPINION BELOW

The Sixth Circuit Court of Appeals has rendered judgment in this case.

The ORDER dated APR 18, 1989 is re--copied in Appendix -A- beginning on page 26.

The judgment did NOT answer five (5) of the nine (9) Questions by the Appellant.

The un-answered questions are I, II, III, VI, and VIII.

These questions are asked in this Petition using the same number designation.

The Sixth Circuit denied an emergency motion for release after the United States has conceded "a technical violation of Federal Criminal Rule 9 since the summons

was issued upon an information and was not supported by a verified affidavit or other wise supported by probable cause".

The ORDER of the Sixth Circuit in its denial of the motion did not address the issues brought up in the Emergency Motion. The Court cited U.S.C. 21 (sic) 7203 which has no bearing on this case, gives one court "cite" that does not apply to this case, and gives another court "cite" that does not exist.

Romp filed a MOTION FOR REVIEW AND RECONSIDERATION BASED ON SIX (6) ERRORS IN THE ORDER FILED FEBRUARY 21. The Court issued an ORDER dated APR 19, 1989 in which U.S.C. 21 was changed to U.S.C. 26, but did not reply to the other errors. This ORDER is re-copied at Appendix -A- page 31.

The Emergency Motion is reprinted at Appendix -A- page 11.

The Motion for Review and

Reconsideration is reprinted in Appendix -B- hereto.

JURISDICTION

The Supreme Court has jurisdiction to review this case by authority of 28 §2106 and Supreme Court Rules 17.

STATEMENT OF GROUNDS FOR JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES

The JUDGMENT IN A CRIMINAL CASE was imposed July 11, 1988. The document is number 127 on page 9 of the docket sheet.

A MOTION UNDER 28 USC §2255 was filed in the CRIMINAL CASE but the Clerk of Court assigned a CIVIL Case number C 88-7319. (Docket No. 85)

A MEMORANDUM AND ORDER IN CASE NO. C 88-7319 was DENIED by Judge Potter May 24, 1988 (Docket no. 87)

A MOTION TO CORRECT MEMORANDUM AND ORDER TO SHOW THE CRIMINAL CASE NO.

87-7071M was filed In the Criminal Case June 2, 1988 (Docket no. 89) and Affidavit (Docket No. 90). MOTION DENIED June 20, 1988 (Docket No. 93)

A second MOTION UNDER 28 USC § 2255 was filed June 27, 1988 in attempt to have the MOTION in the CRIMINAL CASE as specified by Rule 3(b) of the RULES SECTION 2255 PROCEEDINGS. ("the clerk of the district court shall file the motion and enter it on the docket in his office in the criminal action") This MOTION was assigned Civil case No. C88-7413.

On July 5, 1988, Judge Potter DENIED the MOTION in Civil Case No. C88-7413 and also had "87-7071M" typed under the Civil Case Number. (Docket No. 108).

The government attorney in the BRIEF FOR APPELLEE filed in the Sixth Circuit Court of Appeals in note "1" on page 1 stated "The government concedes a technical

violation of Federal Criminal Rule 9 since the summons was issued upon an information and was not supported by a verified affidavit or otherwise supported by probable cause"

An EMERGENCY MOTION FOR RELEASE FROM IMPRISONMENT PENDING APPEAL BASED ON THE VIOLATION OF FEDERAL CRIMINAL RULE 9 AND THE DENIAL OF RIGHTS UNDER THE FOURTH AMENDMENT was received and filed by Leonard Green, Clerk on January 25, 1989. This motion recopied in Appendix -A- page 11.

An ORDER ENTERED BY ORDER OF THE COURT was filed Feb 21, 1989, and is recopied in Appendix -A- page 9.

On March 13, 1989, Leonard Green, Clerk received and filed a MOTION FOR REVIEW AND RECONSIDERATION BASED ON SIX (6) ERRORS IN THE ORDER FILED FEBRUARY 21, and is recopied in Appendix -B-.

The Statutory provision believed to

confer jurisdiction on this Court for a writ of certiorari are:

(a) Supreme Court Rule 17.1.(a);

(b) 28 U.S.C. § 2106;

(c) Constitution of the United States Article VI Paragraph 2.

CONSTITUTIONAL PROVISIONS, STATUTES, RULES AND REGULATIONS INVOLVED

Constitution of the State of Ohio

Article I Section 10

Constitution of the United States

Article III Section 1

Amendments

Amendment IV

Amendment V

Amendment VI

Amendment VIII

Rules and Statutes

Federal Rules of Criminal Procedure

Rule 1. Scope

Rule 2. Purpose and Construction

Rule 3. The Complaint

Rule 4. Arrest Warrant or Summons upon Complaint

Rule 5. Initial Appearance Before the Magistrate

Rule 6. The Grand Jury

Rule 7. The Indictment and the Information

Rule 9. Warrant or Summons Upon Indictment or Information

Federal Rules of Civil Procedure

Rule 4(d)(1) Summons and Complaint: Person to be served

Rules of Procedure for the Trial of Misdemeanors before United States Magistrates

Rule 1(b) Applicability of Federal Rules of Criminal Procedure

Rule 2(c) Consent and Arraignment

Rule 4(c) Summons and Warrant

Rules Governing Proceedings in the United States District Courts Under Section 2255 of Title 28, United States Code

Rule 1. Scope of Rules

Rule 3(b). Filing and service.

RULES OF THE SUPREME COURT
OF THE UNITED STATES

Rule 17.1.(a). Considerations governing review on certiorari

Rule 28.5.(c). Filing and service

UNITED STATES CODE

Title 18 United States Code,

Section 3041 Power of Courts

Section 3045 Internal Revenue violations

Title 28 United States Code,

Section 1652. State laws as rules of decision

Section 2106. Supreme Court

Section 2255. Federal Custody

MAGNA CARTA

Article number 40

Article number 45

STATEMENT OF FACTS

1. Romp was seized at his place of work, on privately owned property, on the basis of an arrest warrant issued by the magistrate when Romp did not "appear" in answer to a "purported" summons that was NOT served on the person of Romp, that was issued without probable cause supported by oath or affirmation, and which did not have a "complaint" attached, and which was not served in accordance with the Rules of court, and did not have a Return of Service of the purported Summons.

2. The United States Attorney filed a document with his Information, which designated the Criminal category as TAX FELONY with the CHARGE as "Evasion of Federal Income Tax Returns" (See Document 121 on the Docket sheet) and on another document listed the OFFENSE Type as MS

meaning (misdemeanor) and DESCRIPTION as "Failure to file return".

The Sixth Circuit Court of Appeals said that the trial of Romp was on a Misdemeanor charge and did not require a Grand Jury indictment.

From the papers filed with the Information the INTENT shown was to prosecute a TAX FELONY not a misdemeanor.

3. The District Court did not have a grand jury indictment. The "information" was not verified. Romp did not waive Indictment and was deprived of substantive due process of law.

4. The District Court denied a speedy trial, held Romp without a "committment order" in the Lucas County Correctional Center for one hundred forty-one (141) days, impaneled a petit (trial) jury before a grand jury indictment, and without the court having a document made upon oath or

affirmation that Romp had committed a crime. The magistrate and the judge prohibited Romp from having Assistance of Counsel seated at the defendant's table because the person assisting Romp is not a member of the bar association.

5. The AMICUS CURIAE BRIEF filed in the court and ORDERED "struck" by the United States Magistrate is re-copied in Appendix -D-.

6. The United States Attorney, the assistant United States Attorneys, the Clerk of the Court, the deputy Clerk of Court, the magistrate, the judges (2) of the District Court, the judges law clerks and the Special Agents of the internal revenue service did by their actions, namely (a) unconstitutional seizure; (b) denial of his liberty without a complaint made upon oath or affirmation; (c) refusal of effective counsel; (d) impaneled a trial

jury in the absence of a criminal complaint; (e) attempted to coerce Romp to confess by signing a release upon a personal recognizance bond; (f) on two (2) occasions attempted to force Romp to accept a lawyer (member of the court) to "represent him"(Romp); (g) held a "probable cause" hearing that was out of time by the court rules in which the Special Agents of the internal revenue service did not make any statement under oath that Romp has committed a crime; (h) that all the above mentioned parties made or swore an oath to uphold the Constitution and knowingly did injure and oppress Romp in the free exercise and enjoyment of rights secured to Romp by the Constitution of the State of Ohio and the Constitution of the United States. Then the Sixth Circuit Court of Appeals did not overrule the District Court in its Unconstitutional acts, and did not

answer the issues in the EMERGENCY MOTION FOR RELIEF PENDING APPEAL after the government by the United States Attorney conceded a "technical violation" of Federal Criminal Rule 9.

7. The magistrate and the trial judge ordered that Romp could only have a person who is a member of the bar to represent Romp and to be seated at his table. Romp did not want "representation". Romp wanted "assistance of counsel".

8. The Constitution of the State of Ohio in Article I section 10 (in part) says "In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel". Such appearance and defense in person and with counsel does not require an inhabitant to relinquish a Constitutional Right and permit a lawyer who is a member of the court and of the Bar

Association to "represent" him.

9. The District Court, the Clerk of Court and deputy clerks, the magistrate, the judges (2) and their law clerks, the U.S. Attorney and assistant U.S. Attorneys did willfully, maliciously and with intent ignore and refuse to obey the Constitution of the United States, and the Court Rules as promulgated by the United States Supreme Court. (See Appendix -D-)

10. The magistrate held a "probable cause" hearing on November 2, 1987. The Transcript of the November 2 hearing on page 20 at line 2: The COURT: Believe me, the defect that I think you perceived and the manner in which you were brought before this court has, as I understand your contentions, has, been cured. The government has shown probable cause under oath.

11. The Sixth Circuit Court of Appeals

said the District Court did NOT deny Romp the protection of the Bill of Rights.

12. The Court did NOT respond to ALL questions asked by Romp.

LACK OF

FEDERAL JURISDICTION
IN THE COURT OF FIRST INSTANCE

"The legislative authority of the Union must first make an act a crime, affix a punishment to it, and declare the court that shall have jurisdiction of the offense." *United States v Hudson*, 7 Cranch 32, 34 (1812)

The District Court did not have jurisdiction of the person nor of the subject matter in the unConstitutional criminal prosecution of Edward E. Romp.

Before a court can act it must have jurisdiction over both the person and the subject matter. If either is wanting, the court is without jurisdiction. In this connection there is no federal statute which makes the filing of a tax return mandatory. All available case law affirms that filing a tax return is voluntary. If

Filing a tax return is mandatory, then the return would become inadmissible evidence in any criminal proceeding against the filer, lest the 5th Amendment be offended. Since there is no federal statute which makes the filing of a tax return mandatory, a private individual is under no compulsion to file, and no federal court has jurisdiction over the subject matter in 26 U.S.C. 7203 criminal prosecutions. "The criminal jurisdiction of the United States is wholly statutory"
United States v Flores, 289 U.S. 137, 151 (1933)

Title 28§1340 gives the district court original jurisdiction of any CIVIL action in matters concerning internal revenue. The prosecution of Romp was a criminal prosecution therefore the district court did NOT have jurisdiction under this title and section.

There is no federal statute which confers criminal jurisdiction to the federal courts in internal revenue matters. Title 28 USC Section 1340 confers the district courts with civil jurisdiction alone in matters arising under the Internal Revenue Code. It is well settled that a civil code which contemplated criminal penalties and sanction is unenforceable, null and void: *United States v. Claflin*, 97 U.S. 546 (1878)

Title 18§3041 Power of courts and magistrates says "For any offense against the United States, the offender may. . ." The United States Attorney has not claimed that Romp committed any act that was an offense against the United States.

Title 18§3045 Internal Revenue Violations. "Warrants of Arrest for violations of internal revenue laws may be issued by United States magistrates upon

the COMPLAINT of a United States Attorney. The United States Attorney did NOT make a complaint upon oath or affirmation.

The United Stated District Court for the Northern District of Ohio, Western Division did not have subject matter jurisdiction because the United States Attorney did not comply with Title 18 §§3045, or the Federal Rules of Criminal Procedure, Rules 3, 4, 5, and 9.

Where the accused does not voluntarily surrender his person to the jurisdiction of the court and actively contests jurisdiction, no fiction of law can be invented whereby the court may gain jurisdiction. A fiction of law will not prevail where the fact appears, or where there is no voluntary submission to the court's jurisdiction; *United States v 1960 Bags of Coffee*, 8 Cranch 398, 415 (1814)

REASONS FOR GRANTING THE WRIT

The questions before the Supreme Court are substantial Constitutional questions that should be answered in the interest of justice.

The Supreme Court in Boyd v United States, 116 U.S. 616 at page 635 said:

> "It is the duty of the courts to be watchful for the constitutional rights of the citizen, against any stealthy encroachments thereon."

The judges of the District Court and the Sixth Circuit Court of Appeals have refused to be bound by the Constitution, and are not "holding their offices during good behavior".

The magistrate has not been given authority under the Constitution of the United States and he has refused to abide by the Rules pertaining to his office, that have been ORDERED by the Supreme Court.

Constitution for the United States
Article VI Paragraph 2.
This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, any thing in the Constitution or laws of any State to the contrary notwithstanding.

Constitution for the United States
Article III Section 1.
The judicial power of the United States, shall be vested in one supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminshed during their continuance in office.

The Judges of the Sixth Circuit Court of Appeals and the United States District Court have forgotten one of the great documents in the History of English Common Law, The MAGNA CARTA.

MAGNA CARTA
Article number 40
"To none will we sell, to none deny or delay, right or justice"

Article number 45
"We will not make men justices, constables, sheriffs, or bailiffs, unless they are such as know the law of the realm, and are minded to observe it rightly.

The Sixth Circuit Court of Appeals has not disciplined the United States District Court, but has sanctioned the UN-Constitutional proceedings in the lower court.

The Supreme Court is Created by the Constitution of the United States and must uphold The Constitution. The Creator is greater than the creation of the Creator.

The Supreme Court of the United States should exercise the Courts power of supervision over the Sixth Circuit Court of Appeals and reverse and overrule the decisions in the lower courts.

I

The United States Attorney and Assistant United States Attorney, the Clerk of Court and Deputy Clerk of Court, the United States Magistrate, the United States District Court Judge and his Law Clerks, the United States Marshal and Deputy U.S. Marshal have REFUSED TO OBEY the Constitution of the United States; Positive law of the United States Code; the Federal Rules of Criminal Procedure and Federal Rules of Civil Procedure and the Constitution and laws of the State of Ohio.

The decision of the district court is so far contrary to the accepted meanings of the Fourth Amendment, and the Sixth Circuit's sanctioning of the acts of the district court that it is necessary for the Supreme Court to exercise its power of supervision over the Sixth Circuit and prevent further sanctioning of lawlessness in the lower courts.

The refusal of the Sixth Circuit and the District Court to consider the Fifth

Circuit case of United States v Millican, 600 F.2d. 273, stating that it is not permissible to issue a warrant for arrest based upon a summons that does not have "a showing under oath of probable cause" is a conflict with the decision of another federal court of appeals on the same matter.

The District Court denied the defendant's motion under 28 U.S.C. §2255

II

Edward E. Romp, an inhabitant of the State of Ohio, did not voluntarily appear to answer a summons that was NOT served upon him by a United States Marshall or any other person authorized to serve a summons in a civil action, or left at his dwelling place BUT was simply sent by regular U.S.Mail. The defective summons did not have a written sworn complaint attached. Romp knew that that to voluntary appear to answer the defective summons would give jurisdiction to the court and would waive the defects in the summons.

Where the accused does not voluntarily

surrender his person to the jurisdiction of the court and actively contests jurisdiction, no fiction of law can be invented whereby the court may gain jurisdiction. A fiction of law will not prevail where the fact appears, or where there is no voluntary submission to the court's jurisdiction; *United States v 1960 Bags of Coffee*, 8 Cranch 398, 415 (1814)

III

ROMP was arrested on a warrant issued for failure to answer a summons which was NOT served upon him by a United States Marshall or any other person authorized to serve a summons in a civil action, Nor left at his dwelling place BUT was simply sent by regular U.S.Mail. The summons did not have a sworn complaint attached to the summons. The court did not have a showing of probable cause, supported by a sworn written statement.

Before a court can act it must have

jurisdiction over both the person and the subject matter. If either is wanting, the court is without jurisdiction. In this connection there is no federal statute which makes the filing of a tax return mandatory. All available case law affirms that filing a tax return is voluntary. If filing a tax return is mandatory, then the return would become inadmissible evidence in any criminal proceeding against the filer, lest the 5th Amendment be offended. Since there is no federal statute which makes the filing of a tax return mandatory, a private individual is under no compulsion to file, and no federal court has jurisdiction over the subject matter in 26 U.S.C. 7203 criminal prosecutions. "The criminal jurisdiction of the United States is wholly statutory" *United States v Flores*, 289 U.S. 137, 151 (1933)

IV

The Fifth Amendment states that no person shall . . .be deprived of Life, liberty, or property without due process of law, The Fourth Amendment states that "no warrant shall issue, but upon probable cause supported by oath or affirmation" and Fed. Crim. R. 3 states that a "complaint is a written statement of the essential facts constituting the offense charged. It shall be made upon oath before a magistrate.

The seizure under "color of law", which is defined in Black's Law Dictionary, Revised Fourth Edition as, "the appearance or semblance, without the substance, of legal right" of Romp is kidnapping, the taking by force of a person against his will without lawful authority is UNREASONABLE seizure of Romp.

The refusal of the Sixth Circuit and the District Court to consider the Fifth Circuit case of United States v Millican, 600 F.2d. 273, stating that it is not

permissible to issue a warrant for arrest based upon a summons that does not have "a showing under oath of probable cause" is a conflict with the decision of another federal court of appeals on the same matter.

V

Fed. Crim. R. 4 (b) states ". . .may be prosecuted by information if the defendant, after he has been advised of the nature of the charge and of his rights, waives in open court prosecution by indictment.

The Sixth Circuit Court of Appeals stated that Romp was prosecuted for a misdemeanor therefore an indictment is not necessary. The magistrate did not advise Romp of his right to prosecution by indictment. Romp did NOT waive in open court the right to a grand jury indictment. The Sixth Circuit Court of Appeals. The

claim and exercise of a Constitutional Right cannot be converted into a crime, neither can it be converted into a "misdemeanor".

VI

Romp an inhabitant of Ohio was prosecuted in a United States District Court for an alleged crime that is not listed in Title 18 United States Code Crimes and Criminal Procedure. The court did NOT havea sworn written statement naming the crime, the court having jurisdiction, the location where the alleged crime was committed, or the person who committed the alleged crime. There has not been a presentment or indictment by a grand jury nor was an indictment waived, nor was consent given to be prosecuted by a Magistrate on an information.

The Constitution of the State of Ohio in Article I Section 10 says in part:

> "In any trial, in any court, the party accused shall be allowed to defend in person and with counsel."

Title 28 United States Code Section 1652 requires that the laws of the state

shall be the rule of decision in civil actions.

The Constitution of the State of Ohio is the Supreme Law of the State of Ohio and the United States District Court must recognize and comply with it in civil matters, and CRIMINAL matters also because a criminal court is "any court".

"The legislative authority of the Union must first make an act a crime, affix a punishment to it, and declare the court that shall have jurisdiction of the offense." *United States v Hudson*, 7 Cranch 32, 34 (1812)

VII

The Fifth Amendment states that "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury.

The Sixth Circuit Court of Appeals has not upheld or protected Romp from unConstitutional prosecution, nor has it required the United States District Court for the Northern District of Ohio, Western Division to obey the Supreme Law of the Land and the Court Rules applying to the procedural operation of the District Court, nor has it answered the issues of the Emergency Motion but has used subterfuge and *non sequitors* in denying the motion.

VIII

The US Marshal and Armed Special Agents of the Internal Revenue Service seized Romp at his lawful place of work and at the time of the seizure was not violating Subtitle E, and has not in the past violated Subtitle E.

Federal Criminal Rule 4(a) requires probable cause to be determined "if it

appears from the complaint or from an affidavit or affidavits filed with the complaint, that there is probable cause. The finding of probable cause may be based upon hearsay evidence BUT some person must make an oath to support the probable cause. A probable cause hearing after the arrest has been executed does not meet the requirements of Rule 4(a).

The only authority given IRS agents to serve arrest warrants is during enforcement of Subtitle E. Title 26 U.S.C 7608.

Please note that Subtitle E (pertaining to Alcohol, Tobacco and Certain other Excise Taxes is no longer in the IRS Code) The Internal Revenue Code of 1954 has Sections numbered 5001 to 5862 in Subtitle E.

IX

The US Magistrate, and a United States District Court Judge denied Romp, an inhabitant of the State of Ohio, the right to have the assistance of counsel (who is not a member of any bar association) in a criminal prosecution and also prevented Romp's "assistance of counsel from being seated at Romp's defense table?

The magistrate refused to permit Romp to have seated at his table a person, (who is not a member of the Bar Association nor of the court, to assist Romp in his defense. The magistrate required Romp to file in the court the "Qualification" of his "Assistance of Counsel", then after receiving the "required filing" the magistrate referred the matter to the judge assigned to the case. The United States Attorney filed a Brief in Opposition to permit Romp have "lay" counsel. The

Judge's ORDER denied Romp the Constitutional Right to have effective assistance of counsel seated at the defendant's table. The Judge did permit Romp on several occasions to consult with his "Assistance of Counsel" off the record and outside the courtroom, but in the area in which the spectators are seated.

X

The United States Attorney on the "Designation form to be used by the United States Attorney to indicate the category of the criminal cause for purpose of assignment." selected and marked TAX FELONY and on this form listed the CHARGE as: "Evasion of Federal Income Tax Returns" and then in an accompanying document filed with his (unverified) INFORMATION which listed the type of prosecution as "MS" which on the bottom of the form indicates (MISDEMEANOR) and the description as "Failure to file return".

The designation of "TAX FELONY" shows the intent of the United States Attorney

was to prosecute Romp for a CRIME not a misdemeanor.

XI

The United States Magistrate "struck" an AMICUS CURIAE BRIEF filed by a person who is not a member of the bar association for the "reason" that such person is not a member of the bar association.

See the AMICUS CURIAE BRIEF recopied in Appendix -D-. The District Court was placed on Notice by the Brief that the actions of the court were outside the law. The magistrate did not want to be informed by a LAYMAN that the acts of the court were in violation of the United States Constitution.

CONCLUSION

The law concerning this case is well settled and stable, since the "law" is the Law of the Land - CONSTITUTION OF THE UNITED STATES.

The facts (complete record of the case) are not in dispute, they can not be changed.

The United States District Court and the Sixth Circuit Court of Appeals have trampled the BILL OF RIGHTS in the mud and injustice of a prosecution without the district court having had CONSTITUTIONAL jurisdiction AND to add insult to injury the Sixth Circuit Court of Appeals refused to UPHOLD the protections of the BILL OF RIGHTS.

The attorney for the government has conceded in his Appellant's Brief to the Sixth Circuit Court "a technical violation

of Federal Criminal Rule 9", which in substance is a denial of the requirements of the Fourth Amendment.

In the history of the Supreme Court of the United States there has not been a published decision concerning the denial and violation of Rights as in this case.

The Supreme Court of the United States should grant certiorari in this case in the interest of justice, because of the issues of Right's that were so flagrantly and maliciously violated by the District Court, and sanctioned by the Sixth Circuit.

Edward E. Romp is looking to the Supreme Court of the United States to correct these Constitutional Violations.

> "Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them". Miranda v. Arizona, 384 U. S. 436, 491

IN VIEW OF THE CONFLICT OF THE

DECISION BELOW WITH THE CONSTITUTION OF THE UNITED STATES, the Court may wish to consider summary reversal and grant the relief requested below.

RELIEF REQUESTED

Therefore for RIGHTS TO BE RESTORED and for Edward E. Romp TO BE MADE WHOLE, he prays this Honorable court to:

(A) ORDER the proceedings and the Judgment in the United States District Court concerning this case to be NULL and VOID.

(B) ORDER the United States District Court, the United States Marshal Service, the Bureau of Prisons to return ALL the fingerprints, photographs and signatures of Edward E. Romp.

(C) ORDER the United States Attorney to file a document in the Lucas County Ohio

Common Pleas Court Clerk's Office removing the Certificate of Judgment Lien upon Land and Tenement of Edward E. Romp.

(D) ORDER the special assessment of $25.00 removed.

(E) ORDER that all persons having any connection with the UnConstitutional Seizure and prosecution of Edward E. Romp to have exceeded their Constitutional authority, and state in that ORDER that the said persons were acting under COLOR OF LAW and are individually liable and responsible for their acts.

(F) ORDER that Edward E. Romp is NOT a convicted felon.

(G) ORDER that this case be a published case.

DECLARATION

I, EDWARD E. ROMP, certify and declare that all of the foregoing is true and correct to the best of my knowledge, information and belief.

I further certify and declare that the foregoing of this document, and all the papers and documents filed in the Court of Appeals and the United States District Court and this document have been prepared by my assistance of counsel, Wallace C. Terhune, that he has NOT "represented" me but has COUNSELED and ASSISTED me, that he is not a member of any bar association or of any court and he is not holding himself out to the public as a "lawyer" nor as an "attorney", and

That Magistrate James G. Carr in the transcript -Arraignment, Oct 2, 1987 page 26 (JOINT APPENDIX - page 262 filed by Romp) at line 11 stated:

"Mr. Tarhune will not permitted under circumstance to act as an attorney capacity permitted to sign his name to anything that's filed by you nor will he be permitted to sit at counsel table and address the Court and speak to the Court on your behalf. It's indicated however, you have whatever contact, he can do whatever work he wants with you outside the courtroom. . . ."

and that Edward E. Romp has contracted for the services of Wallace C. Terhune.

Signed and dated this 16 day of June, 1989 at Toledo, Ohio.

Respectfully Submitted

/s/_____
Edward E. Romp
In Propria Persona

Edward E. Romp
3220 Colleen Court
Toledo, Ohio 43614
(Mail Address)

Assistance of (lay) Counsel
Wallace C. Terhune
2439 Lake in the Woods Blvd.
Apt 723
Ypsilanti, Michigan 48198
phone (313) 484 3521

PROOF OF SERVICE

I, Edward E. Romp, certify and declare that I have served all the documents concerning this case by First Class Mail.

Under Supreme Court Rule 28.5.(c) I declare under penalty of perjury that I have made service this 16 day of June 1989, by sending three (3) copies of this Petition for a Writ of Certiorari by Certified Mail to each of the parties listed below.

The Certified Mail number is printed above the address of the parties served.

on

Certified Mail Number
P 905 672 000

United States Attorney
Northern District of Ohio
307 United States Courthouse
Toledo, Ohio 43624

and

Certified Mail Number
P 905 672 001

Solicitor General,
Department of Justice
Washington D.C. 20530

by placing the copies in an envelope addressed as shown above

and after affixing First Class Postage to each envelope, deposited the envelopes in the United States Post Office in Toledo, Ohio.

The service of these documents was placed in the United States Mail the same day the forty (40) copies were sent to the Clerk of the Supreme Court, by United

States Mail.

All parties required by these Rules to be served have been served.

I have requested a Return receipt for each of the certified letters, as further proof that the service has been made. The Return Receipt is addressed to Edward E. Romp, as shown below

Edward E. Romp
3220 Colleen Court
Toledo, Ohio 43614

APPENDIX A

FILED
1988 JUL 12 PM 10:11
CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT
TOLEDO, OHIO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA
v.
Edward E. Romp
S.S. #270-24-8395

JUDGMENT IN A CRIMINAL CASE
Case Number: 87-7071-M

Pro-se
Attorney for Defendant

THE DEFENDANT ENTERED A PLEA OF:

not guilty as to count(s) one, two, three and four

THE DEFENDANT IS CONVICTED OF THE OFFENSE(S) OF: having violated Title 26 U.S.C. §7203 as is charged in each count of the information; further the Court finds willful violation of the terms and conditions of probation imposed April 18,

1988 under the terms of Title 18 U.S.C. § 3651 et. seq., therefore it is

IT IS THE JUDGMENT OF THIS COURT THAT: the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of one hundred forty one (141) days and fined the sum of $5,000.00 on count one (1). Defendant is hereby credited for one hundred forty one (141) days served pending trial in this cause. IT IS FURTHERED ORDERED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of one (1) year and fined the sum of $15,000.00 on each of counts two (2), three (3) and four (4) of the information, said terms of imprisonment to run concurrently with each other and consecutive to count

one (1).

IT IS FURTHER ORDERED that the execution of sentence is hereby stayed until August 1, 1988 at 2:00 p.m. at which time the defendant is to surrender himself to the custody of the United States Marshal, Toledo, Ohio.

In addition to any conditions of probation imposed above, IT IS ORDERED that the conditions of probation set out on the reverse of this judgment are imposed.

AO 245 (REVERSE)

CONDITIONS OF PROBATION

Where probation has been ordered the defendant shall:

(1)refrain .from violation of any law (federal, state, and local) and get in touch immediately with your probation officer if arrested or questioned by a law-enforcement officer;

(2)associate only with law-abiding persons and maintain reasonable hours;

(3)work regularly at a lawful occupation and support your legal dependents, if any, to the best of your ability. (When out of work notify your probation officer at once, and consult him prior to job changes);

(4)not leave the Judicial district without permission of the probation officer;

(5)notify your probation officer immediately of any changes in your place of residence;

(6)follow the probations officer's instructions and report as directed.

The court may change the conditions of probation, reduce, or extend the period of probation, and at any time during the probation period or within the maximum probation period of 5 years permitted by law, may issue a warrant and revoke probation for a violation occuring during

the probation period.

IT IS FURTHER ORDERED that the defendant shall pay a total special assessment of $25.00 pursuant to Title 18, U.S.C. Section 3013 for count(s) four as follows: immediately.

IT IS FURTHER ORDERED that counts N/A are DISMISSED on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall pay to the United States attorney for this district any amount imposed as a fine, restitution or special assessment. The defendant shall pay to the clerk of the court any amount imposed as a cost of prosecution. Until all fines, restitution, special assessments and costs are fully paid, the defendant shall immediately notify the United States attorney for this

district of any change in name and address.

IT IS FURTHER ORDERED that the clerk of the court deliver a certified copy of this judgment to the United States marshal of this district.

The Court orders commitment to the custody of the Attorney General and recommends:

July 11, 1988

Date of Imposition of Sentence

/s/

Signature of Judicial Officer

U.S. District Judge, John W. Potter

Name and Title of Judicial Officer

July 12, 1988

Date

1988 JULY -5 PM 2:18
CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT
TOLEDO, OHIO
FILED

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA
Plaintiff

vs.

Edward E. Romp
Defendant

Case Number: C88-7413M
87-7071-M

MEMORANDUM AND ORDER

POTTER, J.:

The Court has before it defendant's second motion Under 28 U.S.C.§2255 to vacate, set aside or correct sentence. Under 28 U.S.C.§2255, the sentencing court is not required to entertain a second motion for similar relief. Furthermore, this cause is on appeal. There are no extraordinary circumstances requiring this Court to consider defendant's motion.

THEREFORE, for the foregoing reasons, good cause appearing, it is

ORDERED that defendant's motion to vacate, set aside or correct sentence be, and hereby is, DENIED.

/s/ John W. Potter
United States District Judge

FILED
FEB 21 1989
LEONARD GREEN, Clerk

No. 88-3354

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA
Plaintiff

vs.

Edward E. Romp
Defendant

ORDER

Before: KEITH, MARTIN and RYAN, Circuit Judges.

Defendant Romp proceeding pro se, has filed a third motion for bail pending appeal from his conviction on four counts of failing to file federal income tax returns in violation 21 (sic) U.S.C. §7203. In his current motion for bail pending appeal, defendant presents an argument not previously raised by defendant or considered by this court.

Upon consideration of defendant's argument, we conclude that defendant has

failed to establish the existence of a substantial question likely to result in an order or reversal or for a new trial. United States v. Pollard, 778 F.2d 1177 (6th Cir. 1985); United States v. Vance, 857 F.2d 166 (6th Cir. 1988). Accordingly, defendant's motion for bail pending appeal is denied.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green

Clerk

RECEIVED
JAN 25 1989
LEONARD GREEN, Clerk

FILED
JAN 25 1989
LEONARD GREEN, Clerk

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff/Appellee,

vs

EDWARD E. ROMP

Defendant/Appellant.
_____/

CASE NO. 88-3354
Dist. Court Case No. 87-7071M
Northern District of Ohio
Western Division

EMERGENCY MOTION FOR RELEASE FROM IMPRISONMENT PENDING APPEAL BASED ON THE VIOLATION OF FEDERAL CRIMINAL RULE 9 AND THE DENIAL OF RIGHTS UNDER THE FOURTH AMENDMENT

COMES NOW Defendant/Appellant, Edward E. Romp, *In Propria Persona* with Assistance of (lay) Counsel, to move this Court in EMERGENCY ACTION for a PROCEDURAL ORDER of

this Court granting the IMMEDIATE release from urlawful, unConstitutional imprisonment, pending the outcome of the appeal in this case.

This is a MOTION FOR PROCEDURAL ORDER under Rule 27(b) and "may be acted upon at any time, without awaiting a response thereto".

This Court has before it, the Appellant's Brief, the Brief for Appellee, the Reply Brief of Appellant, the Joint Appendix (as prepared by Appellant) and the complete record of the case, which was released for transmittal to the Sixth Circuit by request to the Clerk of the District Court.

The United States Government by and through William J. Edwards, Acting United States Attorney and Thomas O. Secor, Assistant United States Attorney on page 1 of the Brief for the Appellee in footnote [1]

this Court granting the IMMEDIATE release from unlawful, unConstitutional imprisonment, pending the outcome of the appeal in this case.

This is a MOTION FOR PROCEDURAL ORDER under Rule 27(b) and "may be acted upon at any time, without awaiting a response thereto".

This Court has before it, the Appellant's Brief, the Brief for Appellee, the Reply Brief of Appellant, the Joint Appendix (as prepared by Appellant) and the complete record of the case, which was released for transmittal to the Sixth Circuit by request to the Clerk of the District Court.

The United States Government by and through William J. Edwards, Acting United States Attorney and Thomas O. Secor, Assistant United States Attorney on page 1 of the Brief for the Appellee in footnote [1]

and footnote [3] on page 12. have admitted and confessed that the government did not have probable cause supported by oath to issue summons, warrant or to prosecute Edward E. Romp.

[1]The government concedes a technical violation of Federal Criminal Rule 9 since th summons was issued upon an information and was not supported by a verified affidavit or otherwise supported by probable cause.

[3]The summons was not correctly issued upon probable cause as Federal Criminal Rule 9 requires.

Pages 1 and 12 of the BRIEF FOR APPELLEE are attached following the signature and preceding the certificate of service.

Federal Rules Of Appellate Procedure requirements:

Appelate Rule 8

This motion is made to the court of appeals or to a judge thereof.

Application to the district court is not practicable for the following reasons

1. The district court permitted this case to go to trial with the full knowledge that there was not a statement made upon oath charging Romp with a crime.

2. An Amicus Curiae Brief was filed by Wallace C. Terhune, advising the court of the errors in seizing Romp.

3. Magistrate Carr struck the Amicus Curiae Brief.

4. The district court denied the Habeas Corpus application filed by Terhune, in effect suspending the ancient writ.

5. The district court denied the Habeas Corpus application filed by Romp, in effect

suspending the ancient writ.

6. The district court impaneled a petit (trial) jury and put the jury on oath in the absence of probable cause supported by oath.

7. The clerk of the district court changed a Motion under 28 USC 2255, which should have been a motion in the Criminal case, to a filing as a new Civil Action.

8. A second motion under 28 USC 2255 was filed. Judge Potter denied relief under 28 USC 2255.

9. The district court has ignored Romp's objections to this unConstitutional criminal prosecution.

10. The district court has permitted and condoned the acts of the United States Attorney in

permitting the unConstitutional seizure of Edward E. Romp.

11. The district court has permitted and condoned the acts of the United States Attorney in permitting the unConstitutional trial of Edward E. Romp.

12. The district court did not have Constitutional jurisdiction to force a criminal trial upon Romp, because a summons and then warrant must be made upon probable cause and supported by oath. The probable cause supported by oath is equivalent to a sworn "complaint".

13. WITHOUT a "complaint" (written statement made upon oath) there is no basis for a criminal prosecution.

Relief is requested for the reason that Edward E. Romp has been denied his liberty in violation of the Bill of Rights. Romp was restrained of his liberty for one hundred forty-one (141) days in the Lucas County Correctional Center before the trial and has been unconstitutionally and unlawfully imprisoned since August 1, 1988, and is in the Terre Haute Indiana "honor farm".

All these days Romp has been denied Constitutional Rights without a statement made upon oath AND NOW THE GOVERNMENT CONCEDES a "technical violation" of Federal Criminal Rule 9.

Quoting from the NOTES OF ADVISORY COMMITTE ON RULES following rule 9

> "The provision of Rule 9(a) that a warrant may be issued on the basis of an information only if the latter is supported by oath is necessitated by the Fourth Amendment to the Constitution of the United State. See *Albrecht v. United States*,

273 U.S. 1, 5, 47 S.Ct.250, 71 L. Ed. 505."

The "technical violation" of Rule 9(a) is a violation and denial of the Fourth Amendment.

Appelate Rule 9

> (a) The court of appeals or a judge thereof may order the release of the appellant pending the appeal. . . . The court of appeals or a judge thereof may order the release of the appellant pending disposition of the motion.

This court has the authority to ORDER the release of Edward E. Romp pending the appeal.

The reason for the relief requested, Edward E. Romp has been unConstitutionally imprisoned.

The facts relied upon are the "concede-ing" of the government that Romp was seized in violation of Article IV of the Bill of Rights, also called the Fourth Amendment, by and through WILLIAM J.

EDWARDS, Acting United States Attorney, Northern District of Ohio and THOMAS O. SECOR, Assistant United States Attorney.

The Grounds on which this motion is based is the Constitution for the United States of America and the Bill of Rights attached thereto as the first ten amendment.

Based on the "concede-ing" by the government by and through the United States Attorney's (acting and assistant) this court should order the immediate release of Edward E. Romp from imprisonment pending the outcome of this appeal.

Respectfully submitted,

Edward E. Romp 41191-060
In Propria Persona
Federal Prison Camp
P. O. Box 33
Terre Haute, Indiana 47808
(419) 385-2734

Dated: _____ 1989

attachment
photocopies of page 1 and 12 of BRIEF OF APPELLEE follow this page.

recopied page 1 of Appellee's Brief

STATEMENT OF THE CASE

On September 10, 1987, a four (4) count information was filed against Edward E. Romp. (R-2). The information alleged that Romp willfully failed to file his personal income returns for the calendar years 1981 through 1984, in violation of Title 26, Section 7203, United States Code. (R.2). On September 11, 1987, a summons was issued directing Romp to appear for arraignment at 9:00 a.m.on September 21, 1987.[1] When Romp failed to appear, Magistrate James G. Carr issued an arrest warrant.

In the afternoon of September 21, 1988(sic), Romp was arrested and brought before Magistrate Carr. Romp was advised of the nature of the charges against him

and the critical importance of retaining counsel or allowing the court to appoint an attorney for him. (R97: Magistrate Carr at TR 8-12). Neverless Romp insisted on representing himself. (R.97: Romp At TR 9). The proceeding concluded with Romp being detained without bail, since Romp refused to submit to fingerprinting and an interview by the pre-trial relese officer. (R.97: Romp at TR 14).

On September 23, 1987, a proceeding was held wherein Romp appeared with "standby" court appointed counsel. (R.103: Magistrate Carr at TR 3-5). At this hearing , the Detention Order was vacated and Romp ordered released when he satisfied the following conditions:

a. The signing of an unsecured $25,000.00 recognizance bond;

b. the acceptance by a responsible adult of the obligation of insuring the

defendant's appearance at future court proceedings;

c. periodic reporting on a schedule and in a manner to be set by the United States Probation and Parole Service, and compliance with such conditions as they might impose;

---

[1]The government concedes a technical violation of Federal Criminal Rule 9 since the summons was issued upon an information and was not supported by a verified affidavit or otherwise supported by probable cause.

end of recopied page 1 of Appellee's Brief

recopied page 12 of Appellee's Brief

WHETHER AN ARREST, MADE UPON A WARRANT ISSUED WITHOUT A PRIOR DETERMINATION OF OF PROBABLE CAUSE, BUT AFTER ROMP FAILED TO APPEAR PURSUANT TO A SUMMONS, PRECLUDED FURTHER PROSECUTION WHEN A PROBABLE CAUSE HEARING WAS HELD SUBSEQUENT TO THE ARREST

Romp contends that since the arrest warrant had been issued without a finding of probable cause, any subsequent proceeding against him were tainted by an illegal arrest which precluded any further prosecution of his case. The government must concede Romp was arrested upon a warrant issued by the Magistrate without a showing of probable cause, after Romp failed to appear pursuant to a summons[3] from the court to answer the information. This defect was subsequently cured by the Magistrate holding a preliminary hearing wherein probable cause was established.

Even if the defect was not cured by the subsequent probable cause determination, the defect would not preclude further prosecution or be a defense to an otherwise valid conviction.

Support for the proposition that the defect was a curable one and that the Magistrate followed the proper procedure when curing the defect may be found in United States v. Millican 600 F.2d. 273 (5th Cir. 1979), cert. denied, 445 U. S. 915 (1980). In Millican the defendant appeared before the court upon a summons unsupported by oath or affirmation. The information charged the same offense as here, a violation of Title 26, Section 7203, United States Code. The defendant moved to dismiss the information since it was not supported by oath or verification and further argued that the summons was defective because it was also unsupported

by oath or affirmation. At no time prior to trial was a probable cause showing made by the government. Although the court found that a finding

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[3]The summons was not correctly issued upon probable cause as Federal Criminal Rule 9 requires.

FILED
APR 18 1989
LEONARD GREEN, Clerk

No. 88-3354

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

ORDER

Edward E. Romp

Defendant-Appellant

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

BEFORE: RYAN and NORRIS, Circuit Judges; and TURNER, District Judge.*

Edward E. Romp prosecutes this direct appeal from his jury conviction in the district court on four counts of willful failure to file personal income tax returns for the years 1981-84 and in violation 26 U.S.C. § 7203. This case has been referred to a panel for the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination of the record and the briefs,

this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Romp was found guilty by a jury. On appeal, he argues 1) he was not properly before the district court because the charges were never presented to the grand jury and because the information which caused the summons to issue was not supported by probable cause; 2) he was unconstitutionally denied assistance of counsel; and 3) he was not brought to trial within the time constraints of the Speedy Trial Act, 18 U.S.C. § 3161, et seq.

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*The Honorable Jerome Turner, U.S. District Judge for the Western District of Tennessee, sitting by designation.

Romp did not raise the issue of a violation of the Speedy Trial Act in the district court. Failure to raise the claim

that an alleged delay constitutes a violation of the Speedy Trial Act bars assertion of the issue on appeal. Fed. R. Crim. P. 12; United States v. Tercero, 640 F.2d 190 (9th Cir. 1980), cert. denied, 449 U.S. 1084 (1981).

The district court did not err by not ordering the presentment of the charges to the grand jury. The charged offenses are misdemeanors, punishable by a term of imprisonment of one year or less. No presentment to the grand jury is therefore required. See United States v. Pandilidis, 524 F.2d 644 (6th Cir.), cert. denied, 424 U.S. 933 (1975). Romp was not unconstitutionally denied grand jury presentment for these offenses.

Romp was not denied a constitutional right by an arrest warrant unsupported by probable cause. The government concedes a technical violation of Fed. R. Crim. P. 9

because the arrest warrant was issued upon an information and was not supported by a verified affidavit or otherwise supported by probable cause. However, upon Romp's motion, a hearing was conducted before the magistrate to determine probable cause. We hold, therefore, that Romp received a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest. Gerstein v. Pugh, 420 U.S. 103, 114 (1975). Romp's contention that since the arrest warrant issued without a finding of probable cause, and subsequent proceeding against him is tainted and further prosecution is precluded, is without merit.

Romp was not denied assistance of counsel. The record reveals no abuse of

the trial court's discretion in denying Romp's request for "lay counsel." The district court correctly analyzed Romp's request for "lay counsel;" and we find no reversible error nor abuse of Romp's sixth amendment rights.

Accordingly, the district court's judgment of conviction is hereby affirmed pursuant to Rule 9(b)(5), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

/s/ _____

Clerk.

FILED
APR 19 1989
LEONARD GREEN, Clerk

No. 88-3354

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA

Plaintiff-Appellee

v. ORDER

Edward E. Romp

Defendant-Appellant

Before: KEITH, MARTIN, and RYAN, Circuit Judges.

Defendant Romp moves to reconsider this Court's Order of February 21, 1989. The motion to reconsider is granted and the order of February 21, 1989, is amended as follows:

Defendant Romp proceeding pro se, has filed a third motion for bail pending appeal from his conviction on four counts of failing to file federal income tax

returns in violation of 26 § 7203. In his current motion for bail pending appeal, defendant presents an argument not previously raised by defendant or considered by this court.

Upon consideration of defendant's argument, we conclude that defendant has failed to establish the existence of a substantial question likely to result in an order of reversal or for a new trial. United States v. Pollard, 778 F.2d 1177 (&th Cir. 1985); United States v. Vance, 857 F.2d 166 (6th Cir. 1988). Accordingly, defendants motion for bail pending appeal is denied.

ENTERED BY ORDER OF THE COURT

/s/ _____

Clerk.

FILED
FEB 21 1989
LEONARD GREEN, Clerk

No. 88-3354

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA

Plaintiff-Appellee

v. ORDER

Edward E. Romp

Defendant-Appellant

BEFORE: KEITH, MARTIN and RYAN, Circuit Judges

Defendant Romp proceeding pro se, has filed a third motion for bail pending appeal from his conviction of four counts of failing to file federal income tax returns in violation of 21 U.S.C. Section 7203. In his current motion for bail pending appeal, defendant presents an argument not previously raised by defendant or considered by this court.

Upon consideration of defendant's

argument, we conclude that defendant has failed to establish the existence of a substantial question likely to result in an order of reversal or for a new trial. United States v. Pollard, 778 F.2d 1177 (6th Cir. 1985); United States v. Vance, 857 F. 2d 166 (6th Cir. 1988). Accordingly, defendants motion for bail pending appeal is denied.

ENTERED BY ORDER OF THE COURT

/s/_____

Clerk.

APPENDIX B

RECEIVED
MAR 13 1989
LEONARD GREEN, Clerk

FILED
MAR 13 1989
LEONARD GREEN, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA
Plaintiff

vs.

Edward E. Romp
Defendant

Case Number: 88-3354
Dist. Court Case No. 87-7071M
Northern District of Ohio
Western Division

MOTION FOR REVIEW AND RECONSIDERATION

BASED ON SIX (6) ERRORS IN THE

ORDER FILED FEBRUARY 21

COMES NOW Defendant/Appellant, Edward E. Romp, *In Propria Persona* with Assistance of (lay) Counsel, to move this Court to REVIEW AND RECONSIDER the decision of Circuit Judges KEITH, MARTIN and RYAN, entered by ORDER OF THE COURT and filed Feb 21, 1989.

This ORDER contains six (6) errors.

ERROR NUMBER ONE

The Emergency Motion filed January 25, 1989 was for RELEASE PENDING APPEAL BASED ON THE VIOLATION OF FEDERAL CRIMINAL RULE 9 AND THE DENIAL OF RIGHTS UNDER THE FOURTH AMENDMENT. In the second paragraph on page 1 "This EMERGENCY MOTION is based on facts that are NEWLY RECOGNIZED by the government. Romp has contended from the date of his seizure the same facts conceded by the government".

ERROR NUMBER TWO

The ORDER says "in violation of 21 U.S.C. section 7203". Title 21 is Food and Drugs. Title 21 does not pertain to this case.

ERROR NUMBER THREE

From the statement of the order "In his current motion for bail pending appeal, defendant presents an argument not

previously raised by defendant or considered by this court". It appears from this statement that the HONORABLE JUDGES KEITH, MARTIN and RYAN have not read the EMERGENCY MOTION and have possibly confused this decision with another case, or maybe a clerical error in the transcription of the judges notes.

ERROR NUMBER FOUR

"we conclude that defendant has failed to establish the existence of a substantial question likely to result in an order for reversal or for a new trial". The willful, malicious denial of RIGHTS guaranteed by the BILL OF RIGHTS is certainly a SUBSTANTIAL QUESTION that should likely result in reversal, if not in this court then certainly in the Supreme Court.

ERROR NUMBER FIVE

The case cited as authority United

States v. Pollard 778 F.2d 1177 (6th Cir. 1985) is a case concerning prosecution for the sale of FOOD STAMPS to undercover agents of the United States Department of Agriculture. The Department of Agriculture does not pertain to this case.

ERROR NUMBER SIX

The other case cited as authority United States v Vance, 857 F.2d 166 (6th Cir. 1988) is NON EXISTENT. See page 166 of 857 F.2d attached. In searching the index of cases for the sixth circuit in volume 857 there is not a listing for a "Vance".

These six errors are the basis of this motion to review and reconsider the ORDER of the court.

This error filled ORDER is a *non sequitor* and could be a subterfuge, and a Fabian delaying tactic. Whatever is the

basis for these flagrant errors requires correction.

It should also be noted that the United States Attorney did NOT answer or file any objections to this EMERGENCY MOTION.

The ORDER filed Feb 21, 1989 is a travesty of justice. In light of the six (6) errors, this Court of Appeals should review and reconsider the Emergency Motion filed Jan 25, 1989 and issue an ORDER FOR RELEASE PENDING APPEAL.

Respectfully submitted,

/s/_____
Edward E. Romp 41191-060
In Propria Persona
Federal Prison Camp
P. O. Box 33
Terre Haute, Indiana 47808
(419) 385-2734

Dated: Mar.7___ 1989

attached: photocopy of page 166 of volume

in lieu of the photocopy

the printed page for 857 F.2d. 166 does Not have a case name or any reference to the case cited by the Sixth Circuit Court of Appeals.

APPENDIX C

CONSTITUTIONAL PROVISIONS, STATUTES, RULES AND REGULATIONS INVOLVED

Constitution of the State of Ohio

Article I Section 10

(In Part) ". . .In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel;

Constitution of the United States

Article III Section 1

The judicial power of the United States, shall be vested in one supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The Judges, both of the Supreme and Inferior Courts shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminshed during their continuance in office.

Constitution for the United States

Article VI Paragraph 2.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, any thing in the Constitution or laws of any State to the contrary notwithstanding.

AMENDMENTS

AMENDMENT IV

THe right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of

the accusation; to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of Counsel for his defence.

AMENDMENT VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

RULES AND STATUTES

Federal Rules of Criminal Procedure

Rule 1. Scope

These rules govern the procedure in all criminal proceedings in the courts of the United States, as provided in Rule 54(a); and, whenever specifically provided in one of the rules, to preliminary, supplementary, and special proceedings before United States magistrates and at proceedings before state and local officers.

Rule 2. Purpose and Construction

These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.

Rule 3. The Complaint

The complaint is a written statement of the essential facts constituting the offense charged. It shall be made upon oath before a magistrate.

Rule 4. Arrest Warrant or
Summons upon Complaint

(a) Issuance. If it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe tht an offense has been committed and that the defendant has committed it, a warrant for the arrest of the defendant shall issue to any officer authorized by law to execute it. Upon the request of the attorney for the government a summons instead of a warrant shall issue. More than one warrant or summons may issue on the same complaint. If the defendant fails to appear in response to the summons, a warrant shall issue.

(b) Probable Cause. The finding of probable cause may be based upon hearsay evidence in whole or in part.

(c) Form

(1) Warrant. The warrant shall be signed by the magistrate and shall contain the name of the defendant or, if his name is unknown, any name or description by which he can be identified with reasonable certainty. It shall describe the offense charged in the complaint. It shall command that the defendant be arrested and brought before the nearest available magistrate.

(2) Summons. The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before a magistrate at a stated time and place.

Fed. R. Crim P. 4

(d) Execution or Service; and Return.

(1)By Whom. The warrant shall be executed by a marshal or by some other officer authorized by law. The summons may be served by any person authorized to serve a summons in a civil action.

(2)Territorial Limits. The warrant may be executed or the summons may be served at any place within the jurisdiction of the United States.

(3)Manner. The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in his possession at the time of the arrest, but upon request he shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant in his possession at the time of the arrest, he shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. The summons shall be served upon a defendant by delivering a copy to him personally, or by leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein and by mailing a copy of the summons to the defendant's last known address.

Rule 5. Initial Appearance
Before the Magistrate

(b) Misdemeanors. If the charge against the defendant is a misdemeanor triable by a United States magistrate under 18 U.S.C. section 3401, the United States

magistrate shall proceed in accordance with the Rules of Procedure for the Trial of Misdemeanors Before United States Magistrates

Rule 6. The Grand Jury

(a) Summoning Grand Juries. The court shall order one or more grand juries to be summoned at such times as the public interest requires. The grand jury shall consist of not less than 16 nor more than 23 members. The court shall direct that a sufficient number of legally qualified persons be summoned to meet this requirement.

Rule 7. The Indictment and the Information

(a) Use of Indictment or Information. An offense which may be punished by death shall be prosecuted by indictment. An offense which may be punished by imprisonment for a term exceeding one year or at hard labor shall be prosecuted by indictment or, if indictment is waived, it may be prosecuted by information. Any other offense my be prosecuted by indictment or by information. An information may be filed without leave of court.

(b) Waiver of Indictment. An offense which may be punished by imprisonment for a term exceeding one year or at hard labor may be prosecuted by information if the defendant, after he has been advised of the nature of the charge and of his rights, waives in open court prosecution by indictment.

Rule 9. Warrant or Summons Upon Indictment or Information

9(a) Issuance. Upon the request of the

attorney for the government the court shall issue a warrant for each defendant named in an information supported by a showing of probable cause under oath as is required by Rule 4(a), or in an indictment. Upon the request of the attorney for the government a summons instead of a warrant shall issue. If no request is made, the court may issue either a warrant or a summons in its discretion. More than one warrant or summons may issue for the same defendant. The clerk shall deliver the warrant or summons to the marshal or other person authorized by law to execute or serve it. If a defendant fails to appear in response to the summons, a warrant shall issue. When a defendant arrested with a warrant or given a summons appears initially before a magistrate, the magistrate shall proceed in accordance with the applicable subdivisions of Rule 5.

(b) Form.

(1) Warrant. The form of the warrant shall be as provided in Rule 4(c)(1) except that it shall be signed by the clerk, it shall describe the offense charged in the indictment or information and it shall command that the defendant be arrested and brought before the nearest available magistrate. The amount of bail may be fixed by the court and endorsed on the warrant.

(2)Summons. The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before a magistrate at a stated time and place.

Federal Rules of Civil Procedure

Rule 4(d) Summons and Complaint:
Person to be served. The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(1) Upon an individual other than an infant or an incompetent person, by delivering a copy of the summons and of the complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

Rules of Procedure for the Trial of Misdemeanors before United States Magistrates

Rule 1. Scope
(b) Applicability of Federal Rules of Criminal Procedure. Except as specifically provided by these rules, the Federal Rules of Criminal Procedure govern all proceedings except those concerning petty offenses for which no sentence of imprisonment will be imposed. Proceedings concerning petty offenses for which no sentence of imprisonment will be imposed are not governed by the Federal Rules of Criminal Procedure, except as specifically provided therein or by these rules. However, to

the extent they are not inconsistent with these rules, a magistrate may follow such provisions of the Federal Rules of Crimonal Procedure as he deems appropriate.

Rule 2 Pretrial Procedures

(c) Consent and Arraignment. If the defendant signs a written consent to be tried before the magistrate which specifically waives trial before a judge of the district court, the magistrate shall take the defendant's plea to the misdemeanor charge. The defendant may plead not guilty, guilty or, with the consent of the magistrate nolo contendere. If the defendant pleads not guilty, the magistrate shall either conduct the trial within 30 days upon written consent of the defendant or fix a later time for the trial, giving due regard to the needs of the parties to consult with counsel and prepare for trial.

Rule 4

(c) Summons or Warrant. Upon an indictment or a showing by one of the other documents specified in Rule 2(a) of probable cause to believe that a misdemeanor has been committed and that the defendant committed it, a magistrate may issue an arrest warrant or, if no warrant is requested by the attorney for the government, a summons. The showing shall be made in writing upon oath or under penalty of perjury, but the affiant need not appear before the magistrate. If the defendant fails to appear before the magistrate in response to a summons, the magistrate may summarily issue a

warrant for his immediate arrest and appearance before the magistrate.

Rules Governing Proceedings in the United States District Courts Under Section 2255 of Title 28, United States Code

Rule 1. Scope of Rules

These rules govern the procedure in the district court on a motion under 28 U.S.C §2255

(1) by a person in custody pursuant to a judgment of that court for a determination that the judgment was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such judgment, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack; and

Rule 3. Filing Motion

(b) Filing and Service. Upon receipt of the motion and having ascertained that it appears on its face to comply with rules 2 and 3, the clerk of the district court shall file the motion and enter it on the docket in his office in the criminal action in which was entered thejudgment to which it is directed. He shall thereupon deliver or serve a copy of the motion together with a notice of its filing on the United States Attorney of the district win which the judgment under attack was entered. The filing of the motion shall not require said United States Attorney to answer the motion or

otherwise move with respect to it unless so ordered by the court.

RULES OF THE SUPREME COURT
OF THE UNITED STATES

Rule 17. Considerations governing review on certiorari.

.1. A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and ususal course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

Rule 28. Filing and Service

.5. Whenever proof of service is required by these Rules, it must accompany or be endorsed upon the document in question at the time the document is presented to the Clerk for filing. Proof of service shall be shown by any one of the methods set forth below, and it must contain or be

accompanied by a statement that all parties required to be served have been served, together with a list of th names and addresses of the parties; it is not necessary that service on each party required to be served be made in the same manner or evidenced by the same proof.

(c) By an affidavit of service of the document in question, reciting the facts and circumstances of service in compliance with the appropriate paragraph or paragraphs of this Rule, whenever such service is made by a person not a member of the Bar of this Court.

UNITED STATES CODE

Title 18 United States Code,

Section 3045 Internal Revenue violations

Warrants of arrest for violations of internal revenue laws may be issued by United States magistrates upon the complaint of a United States Attorney, assistant United States Attorney, collector, or deputy collector of internal revenue or revenue agent, or private citizen; but no such warrant of arrest shall be issued upon the complaint of a private citizen unless first approved in writing by a United States Attorney.

Title 28 United States Code

Section 1340. Internal revenue; customs duties

The district courts shall have original jurisdiction of any civil action arising under any Act of Congress providing for internal revenue, or revenue from imports or tonnage except matters with in the jurisdiction of the Court of International Trade.

Section 1652. State laws as rules of decision

The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.

Section 2101. Supreme Court

(e) An application to the Supreme Court for a writ of certiorari to review a case before judgment has been rendered in the court of appeals may be made at any time before judgment.

Section 2255. Federal custody; remedies on motion attacking sentence

A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United State, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is

otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.
A motion for such relief may be made at any time.

APPENDIX D

Filed
1987 SEP 21 AM 9:43
CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT
TOLEDO, OHIO

Wallace C. Terhune
2437 Lake in the Woods Blvd.
Apt 723
Ypsilanti, Michigan 48197
Telephone number 313 485 7509

In propria persona

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OHIO, WESTERN DIVISION

TOLEDO, OHIO

UNITED STATES OF AMERICA	)	
	)	INFORMATION
	)	
PLAINTIFF	)	
	)	
VS	)	
	)	Criminal No.
	)	87-7071-M
	)	U.S.C. 7203
EDWARD E. ROMP	)	
	)	
DEFENDANT	)	
	)	
	)	

AMICUS CURIAE BRIEF

Black's Law Dictionary, Revised Fourth Edition defines "AMICUS CURIAE" as "A friend of the Court". And then it continues "A by-stander (usually a counsellor) who interposes and volunteers information upon some matter of law in regard to which the judge is doubtful or mistaken".

"Also a person who has no right to appear in a suit but is allowed to introduce argument, authority, or evidence to protect his interests."

The Federal Rules of Criminal Procedure for the United States District Courts do not have a rule prohibiting AMICUS CURIAE BRIEFS to be filed in the District Court, therefore this honorable court should accept the instant AMICUS CURIAE BRIEF.

The (bystander) author of this brief is one of WE THE PEOPLE mentioned in

the Preamble to the Constitution for the United States of America, as quoted:

> We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

The accused person listed as "Defendant" is one of We the people of the United States.

The interest (mentioned in the definition above), that the author of this AMICUS CURIAE BRIEF desires to protect is the Constitutional Rights of all of "We the people". If any one of "We the people" is denied any of his substantive rights, as guaranteed by the Constitution for the United States of America, such denial will eventually effect the substantive rights of the author.

I

This Honorable Court is bound by the (1)Constitution for the United States of America, and (2)the Federal Rules of Criminal Procedure for the United States District Courts

II

Rule 3 of the Federal Rules of Criminal Procedure for the District Court.

The Complaint

"The complaint is a written statement of the essential facts constituting the offense charged. It shall be made upon oath before a magistrate."

It must be sworn to positively and not merely aver information and belief, and should be based upon the complainant's personal knowledge or supported by other proof.[*U.S. v. Langsdale; Dordenello v. U. S.*] Usually the Special agent signs the complaint. (This paragraph quoted from

Handbook for Special Agents Chapter 700 Federal Court Procedures and Related Matters at 721)

Note that the person making the complaint under oath is subject to prosecution for perjury if the complaint is not completely true. The person making the complaint is the accuser and this person must be brought into court so that the accused may face his accuser.

If the accused appears VOLUNTARILY before the Magistrate the Sworn Complaint is not necessary, because the Voluntary Appearance is a "confession".

III

The Accused person listed as "Defendant" in the above numbered case has not been served with a Summons and Complaint.

IV

The accused person listed as

"Defendant" in the above numbered case has not been indicted by a Grand Jury.

V

The accused person listed as "Defendant" in the above numbered case has not been charged with any crime listed in Title 18 United States Code.

VI

Title 18 United States Code is POSITIVE LAW, is binding on all persons the same as the Constitution for the United States and violations of Title 18 must be prosecuted in a court of LAW (not equity or admiralty).

VII

Title 26 United States Code is NOT positive law but is only prima facie evidence of law, and is binding ONLY on persons who consent voluntarily; and those who receive privileges from some form of government and are therefore persons made

liable to compliance with Title 26 United States Code.

VIII

For a person to be subject to prosecution for violations of Title 26 that person must be MADE LIABLE under Title 26.

SECTION 6001.

NOTICE OR REGULATIONS REQUIRING RECORDS,STATEMENTS,AND SPECIAL RETURNS.

Every person liable for any tax imposed by this title,or for the collection thereof,shall keep such records,render such statements,make such returns,and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person,by notice served upon such person or by regulations, to make such returns, render such statements,or keep such records,as the Secretary deems sufficient to show whether or not such person is liable for tax under this title. The only records which an employer shall be required to keep under this section in connection with charged tips shall be charge receipts,records necessary to comply with section 6053(c),and copies of statements furnished by employees under section 6053(a).

SEC. 6011.

GENERAL REQUIREMENT OF RETURN, STATEMENT, OR LIST.

(a) GENERAL RULE--When required by regulations prescribed by the Secretary any person made liable for any tax imposed

by this title, or for the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein information required by such forms or regulations.

SECTION 7203

WILLFULL FAILURE TO FILE RETURN, SUPPLY INFORMATION, OR PAY TAX

"Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and upon conviction thereof, shall be fined mot more than $25,000 ($100,000 in the case of any person with respect to whom there is a failure to pay any estimated tax, this section shall not apply to such person with respect to such failure if there is no addition to tax under section 6654 or 6655 with respect to such failure."(emphasis added)

IX

Administrative decisions by IRS employees are brought to the United States District Court (as an Equity Court) for a trial de novo, as if this "trial" was a trial AT-LAW. In actuality this "trial de

novo" is an appeal to District Court by the IRS to uphold the IRS administrative findings. See the definition of "trial de novo" in Black's Law Dictionary Revised Fourth Edition.

The Internal Revenue Service through the Justice Department is attempting to prosecute the accused for an administrative "Crime". The accused person been not been "made liable" by the Secretary of the Treasury to make "such return"

X

The United States Attorneys Office does NOT have responsibility (jurisdiction) to prosecute individual income tax "crimes".

UNITED STATES ATTORNEY'S MANUAL

TITLE 6--TAX DIVISION

6-1.270 Criminal Division Responsibility

The Criminal Division has limited responsibility for the prosecution of offenses investigated

by IRS. Those offenses are: excise violations involving liquor tax, narcotics, stamp tax, firearms, wagering, and coin operated gambling and amusement machines; malfeasance offenses committed by IRS personnel; forcible rescue of seized property; corrupt or forcible interference with an officer or employee acting under the internal revenue laws; and unauthorized mutilation, removal or misuse of stamps. See 28 C.F.R. 0.70

XI

United States Department of Justice

United States Attorney
Southern District of Ohio

Proving Federal Crimes
Written, Revised, and Edited by the office of the United States Attorney
For the Southern District of Ohio

James C. Cissell
United States Attorney
May 1980

Chapter II
FIFTH AND SIXTH AMENDMENT PROTECTIONS

A. CONFESSIONS

"The Fifth Amendment protects an individual's right to be free from compelled self-incrimination. Thus, the government may use at trial only those confessions that are voluntarily made. *Malloy v. Hogan 378* U. S. 1 (1964). The introduction into evidence of an involuntary confession requires reversal of a subsequent conviction. *Mincey v. Arizona*

437 U.S. 389, 398,(1978) *Jackson v. Denno*, 378 U.S. 368, 376-377 (1964). Since coerced connfessions are not only inherently unreliable but also obtained through unlawful methods, courts are concerned with more than just the truth or falsity of a confession. Because of this, whether or not a confession is the truth is irrelevant to the issue of voluntariness. *U.S. v Shoemaker*, 542 F.2d 561 (10th Cir) *cert denied* 429 U. S. 1004 (1976).

1. FORM

If it is properly identified as coming from the defendant, the form in which an admissible confession is received has long been held to be immaterial. *Thomas v. U.S.*, 15 F.2d 958 (8th Cir 1926)

2. NEED FOR CORROBORATION

A confession must be corroborated to sustain a conviction. A defendant may not be convicted soley on the basis of his own admission. *Smith v. U.S.*, 348 U.S. 147 (1974); *U.S. v. Micieli*, 594 F.2d 102 (5th Cir 1979)...The corroborating evidence standing alone need not be sufficient to sustain the conviction, only sufficient to establish the reliability of the confession beyond a reasonable doubt. *U.S. v. Evans*, 572 F.2d 455 (5th Cir) *cert denied* 439 U. S. 870 '1978). In *Opper v. U.S.*, 84,93, (1954) the Supreme Court stated:

> [T]he corroborative evidence need not be sufficient, independent of the statements, to establish the *corpus delecti*. It is necessary, therefore, to require the Government to introduce substantial independent evidence which would tend to establish the trustworthiness of the statement...It is sufficient if the corrobooration supports the <u>essential</u>

facts admitted sufficiently to justify a jury inference of their truth. Those facts plus the other evidence besides the admission must, of course, be sufficient to find guilt beyond a reasonable doubt. (emphasis added)

"All elements of the offense must be established by independent evidence or corroborated admissions. but one available modoe of corroboration is for the independent evidence to bolster the confession itself and thereby prove the offense 'through' the statement of the accused." *Smith v. U.S.*, 348 U.S. 147, 156 (1954).(emphasis added)

4. CONFESSIONS AND THE RIGHTS TO SILENCE AND COUNSEL

"A suspect's Fifth Amendment right against self-incrimination comes into play as soon as law enforcements officers take him into custody or otherwise restrict his freedom of action in any significant way. His Sixth Amendment right to the assistance of counsel attaches upon the initiation of formal adversary proceedings. A formal adversary proceeding can consist of a formal charge, preleminary hearing, indictment, information, or arraignment. *Kirby v. Illinois*, 406 U.S. 682, 689 (1972). An initial appearance before a magistrate is not an adversary proceeding, and thus no right to counsel attaches. *U.S. v.Dohm*, 597 F.2d 535 (5th Cir 1979)(emphasis added)

6. COERCED CONFESSIONS

Coercion, as a method of obtaining a confession, is prohibited. Physical force is but one form of coercion. Physical force includes actual torture. *Brown v. Mississippi*, 297 U.S. 278. (1936)

Coerced statements are

inherently suspect, and the means of coercion are not limited to acts of physical brutality. *U.S. v. Powe*, 591 F.2d 833, 839-840. (D.C. Cir 1978). Coercive pressures can exist independently from threats of use of force. *U.S. v. Hernandez*, 574 F.2d 1362.(5th Cir 1978).

Some psycological pressure may be allowed and confessions based on such pressures are not necessarily involuntary. *e.g., U. S. v. Jordan*, 570 F.2d 635, 643 (6th Cir 1978). But psycological coercion can easily exceed permissible limits.

While psycological pressure may be allowed in some instances, the use of deception has been viewed more narrowly. (emphasis added)

XII

The Summons and Information is an attempt to trick or trap the accused into appearing VOLUNTARILY. According to Rule 4 of the Federal Rules of Criminal Procedure "Upon the request of the attorney for the government a summons instead of a warrant shall issue". If the accused appears voluntarily the court takes jurisdiction. The court then takes cognizance of implied consent, which in turn implies confession of guilt.

The attorney for the government did not have a grandjury indictment, or a complaint made under oath, therefore the attorney for the government does not have a basis for an arrest warrant and is attempting to use the summons to entice the accused into a VOLUNTARY submission to the Magistrate which in turn is accepted by the court as a voluntary "confession". Submission to a Magistrate infers that the accused knows that he is guilty of a "crime" .

The attorney for the government should know that the accused has not committed a crime. His objective is in any way possible to get the accused to "voluntarily appear", which infers "confession", then the "information" filed by the United States Attorney corroborates the "confession" instead of the "confession corroborating the commission of a "crime".

XIII

If the accused does not voluntarily appear on a summons an arrest warrant may issue, BUT...the arrest warrant can only be issued "If it appears from the complaint or from an affidavit or affidavits filed with the complaint, that there is probable cause and that the defendant committed it, a warrant for the arrest of the defendant shall issue...." "The warrant shall describe the offense charged in the complaint."

XIV

The accused can not file a motion for dismissal of the summons and information because to do so gives the court jurisdiction.

XV

The accused can not retain a member of the bar as an attorney because the court recognizes the retaining of an

attorney as giving the attorney a "power of attorney" (the power of attorney may be in writing or merely inferred) and therefore the court has jurisdiction because the attorney is a member of the court. (see definition of *in propria persona* in Black's Law Dictionary, Fourth Edition)

XVI

The accused can not appear "by special appearance" because "special appearance" can only question jurisdiction of the court, which infers that there is a crime that has been committed..

XVII

Ignorance of the law is no excuse for violation of a law. The Secretary of the Treasury has refused the request of the accused to cite the law applying to an individual. The Secretary of the Treasury has either ignored or refused the demand to cite the name and number of the public law

passed by congress whereby the Secretary of the Treasury has jurisdiction over a private citizen. The Secretary of the Treasury has not made the accused "liable" or "required to make a return". Any payments made by an individual, who has not been "made liable" or "required", to the Internal Revenue Service are voluntary gifts. A person cannot be forced to make a voluntary gift. The use of force negates the gift. An individual can stop making a gift at any time.

XVIII

The crux of the situation is: The Internal Revenue Service is attempting to make mandatory compliance to the Internal Revenue Code in place of VOLUNTARY COMPLIANCE.

The United States Attorney is attempting to trick the accused into giving voluntary consent by appearing before a

Magistrate.

The United States Attorney is attempting to use an "information" in place of a COMPLAINT.

Therefore it appears to this bystander that the Summons and "Information" is a subterfuge and for the Accused to appear voluntarily before a Magistrate will deny his substantive rights as guaranteed by the Constitution for the United States of America. These substantive rights are the interests mentioned at the beginning of this AMICUS CURIAE BRIEF which I desire to protect.

Dated this 21st Day of September in the Year of Our Lord One Thousand Nine Hundred Eighty-Seven.

Respectfully submitted

Wallace C. Terhune